

GETTYSBURG BOROUGH ZONING HEARING BOARD

IN RE: **Application of M. G. Felty, Inc. property at 777 Baltimore Street, Gettysburg, PA**

DECISION MEMORANDUM

The Gettysburg Borough Zoning Hearing Board ("Board") convened a hearing to consider the application of M. G. Felty, Inc. ("the applicant") to obtain a special exception from the Borough of Gettysburg ("Borough") Zoning Ordinance 27-903A conversion apartments. Applicant wishes to convert existing mercantile area within the property into apartments

The property is located at 777 Baltimore Street, Gettysburg, PA and is in the TC (Town Center) zoning district. Tax parcel # 16013-0179-000.

The application was heard on April 25, 2018 at 7:00 p.m. prevailing time at the Gettysburg Municipal Building, 59 East High Street, Gettysburg, PA. Written notice of the hearing was given in accordance with law and procedures of the Board by publication in *The Gettysburg Times*; posting; and U.S. first class mail to all interested parties as indicated to the Borough.

Present for the hearing was Gary Shaffer, Project Architect, Max Felty, general partner and owner of the subject property, Bernard Yannetti, Esq., Attorney for the applicant, Board members Stacy Green, Board Chair, Rodger Goodacre, Darlene Brown, Brian Hodges, Larry Weikert constituting a quorum and alternate, Connor Brooks was present, but as the full Board was present he was not seated as a voting member for the hearings.

Also present was Connor Phiel of Shaffer Design Associates and Rebecca Young LaBarre, Borough Planning Director and Zoning Officer. Matthew R. Battersby, Esq. attended and represented the Borough Zoning Hearing Board as a substitute solicitor in place of John S. Phillips, Esq.

Initially, it was thought that the applicant would also need to apply for a variance in connection with the subject building in order to meet minimum side yard set backs per Section 27-904.4. However, after researching the existing building, the zoning officer, Beck LaBarre, determined that the building met the definition of a pre-existing, non-conforming structure and that the building at 777 Baltimore Street footprint was within the building set-back requirements. Accordingly, the building at 777 Baltimore Street is a pre-existing, non-conforming building as defined by Section 27-1402.1 and was a lawful structure and use at the time of enactment. A certificate of non-conformity was officially issued covering the subject building (cert.# 2CL-180007). Said certificate of non-conformity was made a part of the record in conjunction with the hearing and the Board was satisfied that no variance was required relative of lot requirements, side yards.

FINDINGS OF FACT

1. Felty Investment, L.P. of 789 Baltimore Street, Suite 101, Gettysburg, PA 17325 is the property owner having tax parcel #: 16013-017-000.
2. The property is located within the Zoning Ordinance Town Center District.
3. The current use of the property is Business Group 'B', Mercantile Group 'M', Residential Group R-3.
4. The property consists of eleven (11) business and mercantile units as well as six (6) apartment units mixed though out the entire property.
5. The site consists of one (1) large building. The main structure on Baltimore Street is a three (3) story brick with a combination of one and two story additions built out of wood frame or CMV masonry. The rear of the site provides a courtyard within the structure.
6. M. G. Felty, Inc. (General Manager, Max Felty) is the owner/operator of the building.
7. The property will continue to be a mixture of mercantile, business and residential units. The applicant will reconfigure the building to allow more residential units, while decreasing the mercantile leased area.
8. There will be no new expansion of the footprint area of the building. The modification of the building will be done in order to allow a second story in the area that is already one to one and one half (1 to 1½) stories at the rear of the property.
9. The proposed use and its location is generally consistent with the comprehensive plan and the current Gettysburg Zoning map..
10. The proposed use meets all applicable general and supplemental regulations set forth in the Zoning Ordinance Part 13, Part 15 and, if applicable, the design standards, Part 19.
11. The proposed use will not substantially detract from the current use of the building or the property or from the character of the neighborhood, and the use of the adjacent property is adequately safeguarded.
12. The proposed use of the building will promote preservation or adaptive reuse of the site and structures identified by the Borough Historic District regulation.

13. The proposed use will have adequate parking in conjunction with a leasehold agreement on adjacent property owned by Mr. Felty.
14. The proposed use provides safe and adequate access to streets..
15. The proposed use provides for pedestrian access to the site.
16. The proposed use will not adversely affect public facilities and utilities such as water, sewer, police nor fire protection..
17. The proposed use will comply with all signage regulations of Chapter 19 of the Borough Code of Ordinances.
18. The Borough of Gettysburg Planning Commission met on March 16, 2018 and voted to recommend the special exception requested for conversion apartments at 777 Baltimore Street, Gettysburg, PA.
19. The alteration will not impair the use of the Soldiers National Cemetery in any way.

APPLICABLE LAW

1. The burden is on applicant to provide "substantial evidence" to allow the Board to make its findings. Sadsbury Twp. Zoning Hearing Bd vs. Sadsbury Twp. Bd. Of Supervisors 804 A 2d 1274 (Pa Cmwlth 2002).
2. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion One Meridian Partners LLP vs. Zoning Board of Adjustment of Philadelphia 867 A. 2d 706 (Pa Cmwlth 2005).

ANALYSIS

An application for a special exception or conditional use generally centers on two issues. The first is whether the application falls within the special exceptions or conditional use provision of the municipal zoning ordinance. If the answer is "Yes", then the Board must decide whether the permission, if granted, will prove injurious to the public interests under the standards established in the ordinance. The burden of proof and the duty to go forward both fall upon the applicant see Bray vs Zoning Hearing Bd of Adjustment 48 Pa Cmwlth 523, 410 A 2d 909 (1980).

At the hearing owner/operator, Max Felty and his architectural firm clearly meet the burden of proof that the conversion of the building to allow for additional apartments was provided by special exception with the Gettysburg Zoning Ordinance 27-903 A "Conversion Apartments). Furthermore, there were no objectors present at the

meeting. Applicant submitted two letters from neighboring property owners in support of his application. Gettysburg Zoning Officer, Becky LaBarre expressed no concerns with the application.

The only condition attached to the permission granted by the Zoning Hearing Board was that the applicant provide, in written lease form, for additional parking on adjacent neighboring property owned by him for additional parking for any increase in residential tenants to the building located at 777 Baltimore Street. The applicant agreed to this condition and request.

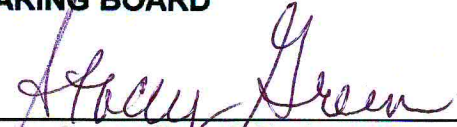
DECISION

After deliberations, the Zoning Hearing Board voted unanimously to approve the application SUBJECT TO ONE CONDITION: That the applicant supply signed leases, evidencing the provision for seven (7) additional parking spaces to be located on 778 Baltimore Street, Gettysburg, PA, and allocated for the use of new residential tenant units at 777 Baltimore Street. Said leased spaces shall be in existence as long as the additional tenant units are available for use and occupancy.

The application is approved subject to the foregoing conditions.

GETTYSBURG BOROUGH ZONING HEARING BOARD

Dated: 7/25/18



Stacey Green, Board Chair